

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

In re:

The Financial Oversight and Management Board  
for Puerto Rico,

as representative of

The Commonwealth of Puerto Rico, et al.,

Debtors.<sup>1</sup>

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**SUPPLEMENTAL DECLARATION OF MARK LAYTON**

Under 28 U.S.C. § 1746, I, Mark Layton, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. I submit this declaration (the “Supplemental Declaration”) to supplement my declaration dated March 25, 2020, which was Attachment 3 to Cobra Acquisitions LLC (“Cobra”) Reply in Support of Its Urgent Motion to Modify the Stay Order and Allow the Undisputed Tax Claims (“Urgent Motion”). I have personal knowledge of the matters stated herein or have acquired such knowledge by personally examining the Business Records kept by

---

<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19 BK 5523-LTS) (Last Four Digits of Federal Tax ID: 3801). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

the Company. If called upon to testify as to the matters stated here, I would and could competently testify thereto.

2. As I testified in my initial declaration, Cobra is owed \$61,668,083.33 plus interest under the First Contract's "tax gross-up" provision ("Tax Gross-Up Amount"), which provides for PREPA to reimburse Cobra for taxes paid to the Commonwealth of Puerto Rico in excess of 8.5%.

3. The Tax Gross-Up Amount is based on invoices Cobra submitted to PREPA in 2018 for work performed by Cobra under the First Contract. Cobra invoiced PREPA for \$678,727,307.86 for services provided by Cobra under the First Contract in 2018, not including tax gross-up amounts. Of the \$678,727,307.86 invoiced to PREPA, PREPA has paid Cobra \$677,667,010.38. In other words, payment is outstanding on only 0.16% of the invoices underlying the Tax Gross-Up Amount. The Excel chart attached hereto as Exhibit 1 is a true and accurate chart reflecting the tax gross up invoices submitted to PREPA for work performed in 2018.

4. Cobra is an accrual basis taxpayer under Puerto Rico tax system. As an accrual basis taxpayer, Cobra was required to pay taxes to the Commonwealth of Puerto Rico on amounts invoiced to PREPA in 2018, whether or not PREPA paid the invoice in 2018 or never pays it at all. Based on my knowledge and experience, I understand that Cobra cannot seek refunds of taxes paid to Puerto Rico for 2018 if PREPA eventually does not pay invoices submitted to PREPA in 2018. My understanding is that, at most, PREPA's non-payment of 2018 invoices could generate tax losses in future years, which would be of no value to Cobra unless Cobra earns income in Puerto Rico to offset those tax losses. Cobra does not currently have any work in Puerto Rico and does not anticipate performing any work in Puerto Rico in the future.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 14, 2020.

  
\_\_\_\_\_  
Mark Layton